MARIMUTHU VELAPPAN

v.

ABDULLAH ISMAIL

HIGH COURT MALAYA, IPOH
VT SINGHAM J
[CIVIL APPEAL NO: 12-9-05]
13 DECEMBER 2006

CIVIL LAW ACT: *Damages - Fatal accident - Loss of dependency - Number of years' purchase - Deceased aged 19 years at time of death - Damages quantified by using multiplier of 7 years - Whether improper - Whether number of years' purchase ought to be 16 - Civil Law Act 1956, ss. 7(3)(iv)(d), 28A(2)(d)(i)*

CIVIL PROCEDURE: *Judicial precedent - High Court - Whether bound by decisions of Court of Appeal and Supreme/Federal Court - Conflicting decisions by differing benches of Supreme Court and Court of Appeal - Whether a bench of the Supreme Court had correctly stated the law - Recourse to take*

The plaintiff's son, aged 19 years, succumbed to death when the motorcycle he was riding collided with a bus driven by the defendant. Thereupon, the plaintiff filed a claim in the Sessions Court seeking damages for himself and his wife as the dependents of the deceased. It was evident that, by virtue of s. 7(3)(iv)(d) of the Civil Law Act 1956 ('the Act'), the court, in quantifying damages in cases of this nature, would have to use the multiplier 16 as the number of years' purchase. That notwithstanding, the Sessions Court, relying on the majority judgment of the Supreme Court in *Chan Chin Min & Anor v. Lim Yok Eng* [1994] 3 CLJ 68, and of the Court of Appeal in *Takong Tabari v. Government of Sarawak & Ors & Another Appeal* [1998] 4 CLJ 589, used the multiplier 7 when awarding damages to the plaintiff. It was apparent that *Chan Chin Min* and *Takong Tabari* endorsed the view that the discretion is with the trial court to determine the appropriate multiplier to be used. The plaintiff nonetheless appealed and argued that the Sessions Court, instead of applying the majority decision in *Chan Chin Min*, ought to have followed another bench of the Supreme Court in *Marappan Nallan Koundar & Anor v. Siti Rahmah bte Ibrahim*, which, though not considered in *Chan Chin Min*, by a unanimous decision, adopted a contrary view. Indeed, *Marappan Nallan Koundar*, in strictly applying the

formula prescribed in s. 28A(2)(d) of the Act to an injured income earner, affirmed the multiplier 16 used by the High Court, notwithstanding that the parties thereto had agreed on a multiplier of 15. It was further contended that whilst *Chan Chin Min* was followed by the Court of Appeal in *Takong Tabari*, other benches of the Court of Appeal, such as *Ibrahim bin Ismail & Anor v. Hasnah Puteh Imat & Anor & Another Appeal, Noraini Omar & Anor v. Rohani Said & Another Appeal,* and *Cheng Bee Teik & Ors v Peter Selvaraj & Anor,* preferred to follow *Marappan Nallan Koundar*. The learned judge took note that the judgments cited, whilst subscribing to two opposing principles of law, were all binding on him – and in the circumstances – took it upon himself to dwell on the issue of *stare decisis*, before taking a definitive stand of his own and answering the question of whether it was wrong of the trial judge below to have reduced the multiplier from 16 to 7.

Held (allowing the appeal):

(1) It is important to appreciate that the provision of s. 7(3)(iv)(d) and s. 28A(2)(d)(i) of the Act carries the same wording for the formula in the multiplier in assessing damages for loss of earnings in respect of a person who was of the age of 30 years or below at the time of his death and in assessing damages for loss of future earnings when the claimant was injured. (para 19)

(2) It is unfortunate that both *Takong Tabari* and *Chan Chin Min* did not have the benefit of considering the unanimous decision of the Supreme Court in *Marappan Nallan Koundar,* it not being cited to their Lordships therein. Had the case of *Marappan Nallan Koundar* although it was a decision in reference to a claimant who was injured been brought to the attention of their Lordships in *Takong Tabari* and *Chan Chin Min*, on the formula for the multiplier, perhaps, it may have made a difference when considering the doctrine of *stare decisis* and binding judicial precedent. (para 23)

(3) This court is not in a position to say expressly, whether the decision of the Supreme Court in *Marappan Nallan Koundar* or the majority decision in *Chan Chin Min* OR the unanimous decision in *Takong Tabari*, the two unanimous decisions in *Ibrahim bin Ismail* and *Cheng Bee Teik* and the majority decision in *Noraini Omar* by the Court of Appeal –

is to be preferred when considering the formula for the multiplier as both decisions of the Supreme Court and the Court of Appeal are binding upon this court. (para 28)

(3a) Nevertheless, upon the express provision of s. 7(3)(iv)(d), coupled with the interpretation given to s. 28A(2)(d)(i) of the Act by the unanimous decision of the Supreme Court in *Marappan Nallan Koundar* which is in *pari materia* with s. 7(3)(iv)(d) on the formula for the multiplier and which was not considered in *Chan Chin Min*, and further considering the three decisions of the Court of Appeal in *Ibrahim bin Ismail*, *Cheng Bee Teik* and *Noraini Omar*, this court is inclined to follow the statutory interpretation given by the Supreme Court in *Marappan Nallan Koundar*, and consequently the unanimous decisions of the Court of Appeal in *Ibrahim bin Ismail* and *Cheng Bee Teik* and the majority decision in *Noraini Omar*. Accordingly, this court has no alternative but to dutifully follow the unanimous decision of the Supreme Court in *Marappan Nallan Koundar* which is also the minority decision in *Chan Chin Min* and followed by the Court of Appeal in *Ibrahim bin Ismail*, *Cheng Bee Teik* and *Noraini Omar*. (para 30).

(4) In the circumstances, the court would allow the appeal, set aside the multiplier of 7 years awarded by the Sessions Court and substitute it with 16 years. Consequently, the award of damages is increased from RM50,400 to RM115,200 (RM600 x 12 x 16). (para 39)

Obiter:

(1) It is to be observed that among the objects for the substantive amendments to the Act which came into effect on 1 October 1984 was, first, to make certain the awards, in view of the variance of court awards in running down cases for personal injuries and dependency actions, and, secondly, to protect the insurance industry. It is also to be observed that prior to the amendment of s. 7 of the Act which has now set the formula for the multiplier, there was the balancing exercise by the courts, *ie*, deduction or discount was made for inevitable contingencies and uncertainties of human life, and secondly for accelerated payment. Further, the diminishing effect in the contribution

A to the parents after the deceased is married if he had been alive and his prospect of marriage was always a relevant factor. (paras 33, 34)

(2) It is regrettable that one thing seemed to have not been B considered or made clear by the amendment. It is the advanced age of the dependents or parents (like 75 years and above). The statutory multiplier does not seem to have taken into consideration or made allowance for this factor, *ie*, the parents' advanced age, notwithstanding that the C contribution may not continue for 16 years had the deceased been alive as this will depend on the health status of the aged parents. (para 34)

Case(s) referred to:

Appalasamy Bodoyah v. Lee Man Seng [1996] 3 CLJ 71 HC ***(refd)***

D *Chan Chin Min & Anor v. Lim Yok Eng [1994] 3 CLJ 687 SC* ***(refd)***

Cheng Bee Teik & Ors v. Peter Selvaraj & Anor [2005] 2 CLJ 839 CA ***(foll)***

Chief Justice Arthur T Vanderbilt of the New Jersey Supreme Court ***(refd)***

Co-operative Central Bank Ltd v. Feyen Development Sdn Bhd [1997] 3 CLJ 365 FC ***(refd)***

E *Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC* ***(refd)***

Dato' Tan Heng Chew v. Tan Kim Hor & Another Appeal [2006] 1 CLJ 577 FC ***(refd)***

Dolbey v. Goodwin [1955] 1 WLR 55 ***(refd)***

Eng Jian Wei & Anor v. Lee Cheong Sim & Ors [2004] 4 MLJ 427 ***(refd)***

Ibrahim Ismail & Anor v Hasnah Puteh Imat & Anor and Another Appeal F *[2004] 1 CLJ 797 CA* ***(foll)***

Kathavarayan v. Ng Sup Moi & Anor [1987] MLJ 246 ***(refd)***

Koperasi Rakyat Bhd v. Harta Empat Sdn Bhd [2000] 3 CLJ 719 FC ***(refd)***

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal [2001] 2 CLJ 525 FC ***(refd)***

G *Lien Hock Seng & Anor v. Sakkarai Mookiah [1997] 2 CLJ Supp 341 HC* ***(refd)***

Marappan Nallan Koundar & Anor v. Siti Rahmah Ibrahim [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174 SC ***(foll)***

Metramac Corp Sdn Bhd v. Fawziah Holdings Sdn Bhd [2006] 3 CLJ 177 FC ***(refd)***

H *Noraini Omar & Anor v. Rohani Said & Another Appeal [2006] 1 CLJ 895 CA* ***(foll)***

Pang Ah Chee v. Chong Kwee Sang [1985] 2 CLJ 221; [1985] CLJ (Rep) 236 FC ***(refd)***

Periasamy Sinnapen v. PP [1996] 3 CLJ 187 CA ***(refd)***

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PP v. Datuk Tan Cheng Swee & Anor [1980] 2 MLJ 276 ***(refd)***
PP v. Mohamed Salleh Bitam and PP v. Bachita Singh & Ors [1940] MLJ 149 ***(refd)***
Ravintharan Perumal v. Kuppusamy Aiyasamy [2005] 2 CLJ 213 HC ***(refd)***
Siti Rahmah Ibrahim v. Marappan & Anor [1989] 1 CLJ 252; [1989] 2 CLJ (Rep) 481 HC ***(foll)***
Takong Tabari v. Government of Sarawak & Ors & Another Appeal [1998] 4 CLJ 589 CA ***(refd)***
Tai Chai Yu v. The Chief Registrar of the Federal Court [1998] 2 CLJ 358 CA ***(refd)***
Tan Kim Chuan & Anor v. Chandu Nair [1991] 1 CLJ 682; [1991] 1 CLJ (Rep) 441 SC ***(refd)***
Wakil Diri bagi Hartapusaka Loganathan Subramaniam lwn. Subramaniam Guruwan & Anor (Civil Appeal No: 12-56-02) (Unreported) ***(foll)***

Legislation referred to:
Civil Law Act 1956, ss. 7(3)(iv)(d), 8, 28A(2)(d)(i)

For the appellant - Inderjit Singh; M/s Sandu & Assoc
For the respondent - Cheong Yau Kheong; M/s Loh & Assoc

Reported by WA Sharif

JUDGMENT

VT Singham J:

[1] This is an appeal on quantum by the plaintiff against the decision of the learned Sessions Court Judge, Teluk Intan which was given on 31 December 2004, in a case commonly known as running down in the legal profession. For convenience, the appellant and the respondent would be referred as plaintiff and defendant respectively.

[2] The plaintiff is dissatisfied with the multiplier of seven years' purchase awarded as loss of dependency. The defendant being dissatisfied on the finding of 100% liability against him has filed a cross-appeal. On the cross-appeal by the defendant against the decision of the learned Session Court Judge who found the defendant 100% liable for the collision, both parties had agreed that the finding of 100% negligence against the defendant as found by the learned Session Court Judge be set aside and that liability be apportioned as 60% negligence against the defendant and 40%

A contributory negligence against the deceased-rider. By consent, the apportionment of liability as agreed by the parties was accordingly recorded.

[3] The plaintiff who is the lawful father of Ramani a/l
B Marimuthu, the deceased (aged 19 years 6 months at the time of his death) filed a claim for damages for himself and his wife as dependants of the said deceased who died in a road traffic accident on 24 February 2002. By the statement of claim filed against the defendant, the plaintiff had pleaded that on 24
C February 2002 at about 3.30pm while the deceased was riding m/cycle no. AEP 1940 from Ringlet towards the direction of Tanah Rata Cameron Highlands, motorbus no. WCD 5938 which was driven by the defendant from the opposite direction encroached into the path of the deceased and caused the collision.
D The plaintiff has also alleged that as a result of the negligent driving of the defendant which caused the collision, the deceased died and set out the particulars of negligence which is not relevant for the purpose of this appeal as the issue of liability has been settled at the outset of this appeal.

E **[4]** As stated above, the appeal by the plaintiff is against the quantum being the seven years multiplier as loss of dependency as awarded by the learned Session Court Judge. The award was RM600 per month x 12 x 7 = RM50,400.

F **[5]** Learned counsel for the plaintiff has submitted the multiplier should be 16 years as provided under s. 7(3)(iv)(d) of the Civil Law Act 1956 and relied on three decisions of the Court of Appeal to support the 16 years statutory multiplier. The cases are:

G (i) *Ibrahim bin Ismail & Anor v. Hasnah bte Puteh Imat & Anor and Another Appeal* [2004] 1 CLJ 797

(ii) *Cheng Bee Teik & Ors v. Peter Selvaraj & Anor* [2005] 2 CLJ 839

H (iii) *Noraini Omar & Anor v. Rohani Said & Another Appeal* [2006] 1 CLJ 895

[6] On the other hand, learned counsel for the defendant has submitted that the multiplier of seven years awarded by the
I learned Sessions Court Judge was correct and relied on the majority decisions of the Supreme Court in *Chan Chin Min & Anor v. Lim Yok Eng* [1994] 3 CLJ 687.

It is useful to reproduce s. 7 (3)(iv)(d) of the Civil Law Act 1956 which states as follows:

> 7. Compensation to the family of a person for loss occasioned by his death
>
> (1) …
>
> (2) …
>
> (3) The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):

Provided that:

> (i) …
>
> (iv) *in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall:*
>
> (a) …
>
> (d) take into account that *in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16*; and in the case of any other person who was of the age range extending between thirty one year and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

[7] It is to be observed that in the instant case, at the time when the learned Sessions Court Judge delivered his decision, he had to consider the majority decision of the Supreme Court in *Chan Chin Min v. Lim Yok Eng* and the unanimous decision of the Court of Appeal in *Ibrahim bin Ismail & Anor v. Hasnah bt Puteh Imat & Anor (and Another Appeal)* [2004] 1 CLJ 797 and the decision of His Lordship Azahar Mohamad JC (as he then was) in *Eng Jian Wei & Anor v. Lee Cheong Sim & Ors* [2004] 4 MLJ 427 which followed the majority decision of the Supreme Court in *Chan Chin Min v. Lim Yok Eng.*

[8] On the other hand, in *Takong Tabari v. Goverment of Sarawak & Ors & Another Appeal* [1998] 4 CLJ 589, Her Ladyship Siti Norma Yaacob JCA (now Chief Judge of Malaya) at p. 605-606 said:

> For loss of dependency, the learned trial judge had on the formula provided by s. 7(3)(iv)(d) of Act 67 calculated the deceased's loss of earnings on the multiplier of nine years purchase and a multiplicand of RM2,500 per month after all the allowable deductions were made. These two figures are not disputed and a total sum of RM270,000 was reached as general damages for loss of dependency. The learned trial judge did not stop there but went on to deduct a sum of RM90,000 equivalents to 1/3 from the total sum calculated thereby leaving a balance of RM180,000 payable. Apart from stating that the 1/3 deduction was for contingencies, other vicissitudes of life and accelerated payment, he did not identify what such deduction relate to.
>
> It is the widow's contention that such a deduction is contrary to law as by the introduction of proviso (d) to s. 7(3)(iv) of Act 67 on 1 October 1984, the discretion to deduct a sum for contingencies, other vicissitudes of life and accelerated payment at common law is now no longer available and with the replacement of that common law practice, there is already a built-in deduction in the statutory formula itself and further deduction as was done in this case was not proper. She contends that the estate is entitle to be paid the total sum of RM270,000 for her claim for loss of dependency. For this contention she relies on the minority decision of the Supreme Court in the case of *Chan Chin Min & Anor v. Lim Yoke Eng (Lawful Mother of Gan Swee Hock, Deceased)* [1994] 3 CLJ 687.
>
> As a court that is inferior to the Supreme Court, we are bound by the principle of *stare decisis* to accept the majority decision in *Chan*'s case. That majority judgment states that as a matter of interpretation if Parliament had intended to depart from the general system of law, it would express its intention with irresistible clearness. Since it found such clearness missing in proviso (d), the common law practice of making deductions for contingencies, other vicissitudes of life and accelerated payment continues to be in force. Under such circumstances and in reliance of the majority decision in *Chan*'s case, we found that the learned trial judge made no error of law when he made the deduction and reduced the claim for loss of dependency to RM180,000.

[9] It is important and interesting to note at this stage that the Court of Appeal in *Takong Tabari v. Goverment of Sarawak & Ors & Another Appeal* has not only confirmed the decision of the High Court on the multiplier being nine years ie, RM2,500 per month x 12 x 9 = RM270,000 to the dependants of the deceased who died in an inflammable gas explosion in a bank but had also confirmed a further deduction of RM90,000 equivalent to 1/3 from the total sum of RM270,000 which was awarded by the High Court thereby leaving a balance sum of RM180,000. In that case, the widow of the deceased (aged 37 years at the time of his death) filed a claim in the High Court, Miri seeking damages for herself, four minor children and the aged parents of the deceased and the estate of the deceased under ss. 7 and 8 of the Civil Law Act 1956.

[10] However in *Ibrahim bin Ismail & Anor v. Hasnah bt Puteh Imat Anor (and Another Appeal)* [2004] 1 CLJ 797, His Lordship Gopal Sri Ram JCA for the Court of Appeal had this to say on the decision of *Takong Tabari* at p 807:

> Our attention was drawn to in *Takong Tabari v. Government of Sarawak & Ors and Another Appeal* [1998] 4 CLJ 589 where this court applied the majority judgment in *Chan Chin Min*. A careful reading of the judgment in *Takong Tabari* makes it clear that no argument as to the correctness of the decision in *Chan Chin Min* was ever addressed to this court. That is not the case here. In the instant appeals counsels before us mounted a frontal attack on correctness of the majority judgment in *Chan Chin Min*. We therefore merely happen to be more fortunate than the court in *Takong Tabari* to deal with the assault on *Chan Chin Min*.

The Court of Appeal in *Ibrahim bin Ismail & Anor v. Hasnah bt Puteh Imat* had in fact not followed the decision in *Takong Tabari* on the multiplier, which was decided by another bench of the Court of Appeal.

[11] In *Cheng Bee Teik & Ors v. Peter Selvaraj & Anor* [2005] 2 CLJ 839 another bench of the Court of Appeal except for His Lordship Tengku Baharudin Shah JCA who was also a member of the bench in *Ibrahim bin Ismail* followed the decision of the Court of Appeal in *Ibrahim bin Ismail* and set aside the ¼ deduction made by the judge of the High Court from the statutory multiplier of 16 years in respect of loss of future earnings, future cost of prosthesis and loss of dependency and instead awarded the 16 years statutory multiplier.

[12] His Lordship Arifin Zakaria JCA (now FCJ) in *Cheng Bee Teik & Ors v. Peter Selvaraj & Anor* in following *Ibrahim bin Ismail*'s case, said at p. 850 d-h:

> We are of the opinion that words embodied in ss. 7(3) and 28A of the CLA are plain, and therefore, in line with the above stated authorities, it is not open to this court to explore what is the real intention underlying the said provisions or the previous history of the law on this matter. In this regard, we agree with the view expressed by Gopal Sri Ram JCA in *Ibrahim bin Ismail* at p. 806:
>
> > It is the very principle that the majority in *Chan Chin Min* breached when purporting to interfere with the pre-determined statutory formula applicable in calculation of loss of earnings in dependency and personal injury claims. With great respect, the majority in *Chan Chin Min* were exercising legislative and not interpretive jurisdiction.
> >
> > There is a further point that the majority in *Chan Chin Min* overlooked. The language of the statute is imperative. It says that "the number of years" purchase shall be 16. The mandatory tenor of the phrase employed by the Parliament to convey its message excludes any pretended exercise of judicial power to substitute some other multiplier for that intended.
>
> For the above reasons, we agree with the view of this court in Ibrahim bin Ismail that the majority view in *Chan Chin Min* was wrong and that the dissenting judgment of Edgar Joseph Jr. SCJ had correctly stated the law. Therefore, following *Ibrahim bin Ismail* the years of purchase in the present case should rightly be 16, as provided under s. 7(3)(iv)(d) of the CLA, and no reduction ought to be made on account of contingencies and other vicissitudes of life as was practiced prior to the enactment of the present s. 7 of the CLA.

[13] In *Noraini Omar & Anor v. Rohani Said & Another Appeal* [2006] 1 CLJ 895 there were two appeals. In the first appeal, the widow and son of the deceased (aged 33 years) filed a dependency claim for damages at the Sessions Court under s. 7 of the Civil Law Act 1956. The learned Sessions Court Judge correctly found the multiplier to be 11 years (132 months) pursuant to s. 7(3)(iv)(d) and applying that to a multiplicand of RM500 per month arrived at RM66,000 for loss of support ie, RM500 per month x 132 months=RM66,000. Since the deceased was 20% liable, the amount awarded for loss of support

was accordingly reduced to RM52,800. On appeal to the High Court, the learned Judicial Commissioner ruled that there should have been a deduction of 1/3 on account of contingencies, vicissitudes of life and accelerated payment and deducted RM17,500 being 1/3 of RM52,800, thereby reducing the award to RM35,200.

[14] In the second appeal, in *(Noraini Omar (appeal no. 71))* the deceased was a bachelor aged 23 years at the time of his death. His mother filed a claim for damages as a dependant. The learned Sessions Court Judge awarded 16 years purchase (192 months) and applying that to a multiplicand of RM600 per month, arrived at RM115,000 (RM 600 x 12 x 192 months = RM115,000) for loss of support. On appeal to the High Court, the learned judge followed the majority decision in *Chan Chin Min* and reduced the number of years' purchase from 16 years to 7 years. The Court of Appeal set aside the multiplier of seven years as awarded by the High Court and reinstated the 16 years in the first appeal as awarded by the learned Sessions Court Judge, His Lordship Arifin Zakaria JCA (now FCJ) said at pp. 909-913:

> This court in *Ibrahim b Ismail* did just that. It held that the majority decision in *Chan Chin Min* was wrong and that the dissenting decision of Edgar Joseph Jr SCJ correctly stated the law and in the same breath disagreed with *Takong Tabari*. It said that, it is a cardinal guide to statutory interpretation that when a statute lays down a specific code or formula to meet a particular mischief of the common law, it is not open to the courts to treat themselves as at liberty to continue to apply the common law in disregard of the statute. It was this very principle that the majority in *Chan Chin Min* breached when purporting to interfere with the pre-determined statutory formula applicable in the calculation of loss of earnings in fatal accident and personal injury claims. The majority in *Chan Chin Min* was thus exercising legislative and not interpretive jurisdiction. It further held that the majority also overlooked the point that the language of the statute is imperative. It provides that the number of years purchase shall be 16.
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> Learned counsel for the respondents in these two appeals, however, urged us to follow the Supreme Court decision in *Chan Chin Min* saying that, being the decision of the apex court, therefore, it is binding on us. To go against the said decision is to disregard completely the principle of *stare decisis*. They submitted, if at all the Supreme Court had erred in its decision, it

is certainly not within the competence of this court to correct the Supreme Court as was purportedly done in *Ibrahim b Ismail*. It is only the Supreme Court or its successor who can correct the wrong and not the Court of Appeal.

Mr Brijnandan Singh Bhar, learned counsel for the appellant in the second appeal pointed out the fallacy of the respondent's contention, in that, since the setting up the present Court of Appeal on June 24, 1994, all appeals emanating from the Sessions Court terminate in the Court of Appeal. Therefore, the correctness or otherwise of the decision of the majority in *Chan Chin Min* could never be tested in the highest court of the land.

It is pertinent to note that the same issue was raised in *Cheng Bee Teik & Ors v. Peter Selvaraj & Anor* [2005] 2 CLJ 839 of this court, where I sat with Abdul Malek PCA and Tengku Baharudin Shah JCA. In that case the claim arose out of a traffic accident between two motorcycles and a motor van. The first appellant was the rider of motorcycle PDK 3393, while the second appellant was the grandmother and dependant of the deceased who was riding pillion on the first appellant's motorcycle. The third appellant was the father and dependant of the deceased rider of the second motorcycle PDF 8839. The first respondent was the driver of the motor van PBY 7446 and the second respondent was the owner of the motor van.

One of the issues that came on appeal before us was whether the learned High Court judge was right in making a deduction of ¼ for loss of future earnings and future cost of prosthesis awarded to the first appellant and also in reducing the years of purchase to 5 years for the second appellant and to 10 years for the third appellant. In making the award the learned judge was relying on the judgment of this court in *Takong Tabari*. In His judgment the learned judge stated:

> In respect of this Mr Rajendran's complaint is that there ought to be a 1/3 deduction from the total award made for future loss based on the Court of Appeal's decision on *Takong Tabari v. Government of Sarawak & Ors (and Another Appeal)* [1998] 4 CLJ 589 which followed the decision of the Federal Court in *Chan Chin Min & Anor v. Lim Yoke Eng* [1994] 3 CLJ 687 which gave the court the right to deduct a sum for contingencies and based on other vicissitudes of life and also taking into account the accelerated payment. Since it is open to each court to consider each case on its own special features when taking into account the principle of contingencies and other

> vicissitudes of life, and bound by the decision of the Federal Court and the Court of Appeal on the application of the said principle, I find that there ought to be a deduction made. However since there was no basis nor explanation for a standard 1/3 deduction, I am of the view that I am not transgressing the principle of *stare decisis* if I exercise my discretion based on the background of the lives of the plaintiffs herein, and make a deduction of ¼ of the total award made.

When that case was decided, the case of *Ibrahim b Ismail* was yet to be decided, therefore the learned judge was thus bound by the decision of this court in *Takong Tabari*. On appeal before us, we had the benefit of the judgment of this court in *Ibrahim b Ismail*. Having considered the issue at hand, we agreed with the decision of this court in *Ibrahim b Ismail* in that as regard fatal accident and personal injury claims, this court, as the apex court involving such claims, at the present moment, is at liberty to depart from the decision of the Supreme Court if we think that the decision of the Supreme Court was wrong. As was said by Gopal Sri Ram JCA in *Ibrahim b Ismail* at p 808:

> If a decision – and more so as here a majority decision – of the former Supreme Court is obviously wrong, then it is our plain duty to say so. It will, with respect, be an abdication of our solemn duty to simply fold our arms in abject of submission and permit an erroneous statement of the law to continue to form part of our jurisprudence especially when its results in an injustice to a litigant.

In *Cheng Bee Teik* we gave our reasons why we ought to depart from *Chan Chin Min*. They are as follows:

> The purpose of the amendment introduced by way of ss. 7(3) and 28A of the CLA, we think, was correctly stated by Gopal Sri Ram JCA in *Ibrahim b Ismail* at p. 805 which reads:
>
> > Now it is common knowledge that Parliament's purpose was to address the very high award of damages for personal injuries and death. This resulted from three causes. First, the application of a flexible multiplier based on the facts and circumstances of each case. So, one could get a multiplier in excess of 16 years for a plaintiff or deceased who was below the age of majority. Second, the admission of an award for "lost years". As a result awards for

A loss of future earnings were frequently handed down in favour of non-employed injured plaintiffs or the estate of deceased victims. Very young children received huge awards based on their future prospects. In *Yang Salbiah & Anor v. Jamil b Harun* [1981] 1 MLJ 292, for example, a 7 year old girl who had become vegetative was awarded a sum in excess of RM30,000 for loss of future earnings based on a multiplier of 25 years purchase. Again, in *Chiang Boon Fatt v. Lembaga Kemajuan Negeri Pahang & Anor, Chin Yee Thow v Lembaga Kemajuan Negeri Pahang & Anor* [1983] 1 MLJ 89, the dependants of a youth who was killed in an accident just as he was about to enter university were awarded RM15,000 as loss of dependency for the lost years on a multiplier of 5 years purchase based on a predicted income he never earned. Third, a person who had attained or exceeded the age of 55 years could claim for loss of future earnings. Thus, in *Tan Kheng Kuan v. Lim Cheng Teik & Ors* [1965] 1 MLJ 116 ,a 56 year old plaintiff who was working as a trishaw rider was awarded loss of future earnings. To emphasize, it is to prevent these types of awards that Parliament acted. That is why you find the fixed formula for the multiplier in the amendments.

It is cardinal principle of the interpretation of statutes that the court should look first to the words of the statute itself, and if these words are plain, it is not permissible to consider what was the intention of the statute or the previous history of the law. (See *Subramanya Sastry v. Sheikh Ghannu* AIR [1935] Mad 928). In *Country Council of Hertfordshire v. Rural District Council of Barnet* [1902] 2 KB 48, at p. 52 Vaughan Williams LJ stated thus:

> ... It is not denied that the words of s. 3 of the Highways and Bridges Act 1891, are such that, if they are construed in their natural sense, the section must be read as giving to the surveyor of highways the power to make the contract which was made in this case. But it is said that, by so construing them, we should be imputing to the legislature that in this section they had made an enactment which was not entirely consistent with previous legislation as to the surveyor of highways and the previous history of that office. I do not think that this would be a sufficient reason for not giving to the section the

> meaning which is plainly conveyed by the words of it. The considerations urged by the counsel for the defendants do not appear to me sufficient to justify us in refusing to construe the section according to what seems to be the manifest intention of the legislature as expressed by the language which they have used.
>
> We are of the opinion that words embodied in ss. 7(3) and 28A of the CLA are plain, and therefore, in line with the above stated authorities, it is not open to this court to explore what is the real intention underlying the said provisions or the previous history of the law on this matter.
>
> Thus, based on the decisions of this court in *Ibrahim b Ismail* and in *Cheng Bee Teik*, discussed above, I am firmly of the view that no deduction ought to be made on account of contingencies, other vicissitudes of life and accelerated payment as was the practice under the common law.
>
> In the result, I would allow both the appeals herein. Consequently, in the first appeal, I order that, the order of the learned judicial commissioner deducting 1/3 from the sum of RM52,000 for loss of support, be set aside and the award of the learned Sessions Court judge be reinstated.

As to the second appeal (*Noraini Omar & Anor (appeal no. 71)*), His Lordship Arifin Zakaria JCA (now FCJ) at p. 913 said:

> ... the order of the learned High Court judge in reducing the multiplier from 16 years to 7 years is set aside and the order of the learned Sessions Court judge is accordingly reinstated. Applying the 16 years' purchase (192 months) to the multiplicand of RM600 per month, the loss of support will come to RM115,200 and not RM115,000 as awarded by the learned Sessions Court judge. Apparently, there is an error in the calculation.

[15] However, by a minority decision in *Noraini Omar*'s case, His Lordship Abdul Aziz Mohamad JCA (now FCJ) at pp. 903-904 said:

> Appeal No. 71 depends on whether *Chan Chin Min* is binding on this court. Notwithstanding that it was a majority decision, it was a decision of a court of a higher tier, and the apex court at that. That a court has to accept loyally a considered decision of a court of a higher tier and is not entitled to question it was reiterated by

A Lord Hailsham in the following passage in *Cassell and Co Ltd v. Broome* [1972] AC 1027 which, in *The Co-operative Central Bank Ltd v. Feyen Development Sdn Bhd* [1997] 3 CLJ 365, the Supreme Court adopted and appears at p. 363 g:

> B The fact is, and I hope that it will never be necessary to say so again, that in the hierarchical system of Courts that exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers. Where decisions manifestly conflict, the decision in *Young v. The Bristol Aeroplane Co.* C offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom.

We have to accept the decisions of the higher court even if we do not agree with them, and as regards the decision in *Chan Chin* D *Min*, there is no necessity for me in this appeal to say whether I think the decision was right or wrong.

The correctness of the decision in *Chan Chin Min* was again questioned and argued on in *Teoh Teik Chai v. Muhamad bin Hashim* (Civil Appeal No. P-45-95) (unreported). The deceased E was an unmarried man aged 24 when he died. The High Court decided that the number of years' purchase was eight instead of sixteen. Again this court (Mokhtar Sidin, Abdul Kadir Sulaiman, KC Vohrah JJCA) decided, on June 25, 2002, that they were bound by the decision in *Chan Chin Min.*

F Since I am of the view that the decision in *Chan Chin Min* is binding on this court, I would dismiss appeal No. 71. As I said, I would allow appeal No. 141.

Doctrine Of *Stare Decisis*

G **[16]** In *Public Prosecutor v. Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 276, Chang Min Tat FJ said at p. 277:

> It is however necessary to reaffirm the doctrine of *stare decisis* which the Federal Court accepts unreservedly and which it expects H the High and other inferior Courts in a common law system such as ours, to follow similarly.
>
> As far back as 1833, Baron Parke in *Mirehouse v. Rennell* at page 1023 commenting on the duties of a judge has this to say:

I

> Our common-law system consists in the applying to new combinations of circumstances those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency and certainty, we must apply those rules, where they are not plainly unreasonable and inconvenient, to all cases which arise; and we are not at liberty to reject them, and to abandon all analogy to them, in those to which they have not yet been judicially applied, because we think that the rules are not as convenient and reasonable as ourselves could have devised. It appears to me to be of great importance to keep this principle of decision steadily in view, not merely for the determination of the particular case, but for the interests of law as a science.

In *Cooper v. Southern Portland Cement Ltd*, Barwick CJ held at page 307 that the Court of Appeal Division of the Supreme Court of New South Wales was bound by the actual decision of a case of the Privy Council and by the principles by which that decision is essentially supported, that is to say, by the basic reasons for its decision. Ong FJ (as he then was) in *Sundralingam v. Ramanathan Chettiar* said that each court is bound by its decisions of courts above it.

In *Miliangos v. George Frank (Textiles) Ltd*, Lord Denning MR at page 564 F6-G3 said in respect of the effect of a judgment of the Court of Appeal on the High Court that:

> ... whether right or wrong, it seems to me that once this court has given its decision upon it all lower courts should follow the decision of this court unless and until it is reversed by the House of Lords. In that way any embarrassment will be avoided.

Lord Gardiner LC in a practice statement on judicial precedent [1996] 1 WLR 1234; [1966] 2 MLJ xi on behalf of himself and the Lords of Appeal in Ordinary, while modifying the then practice to reserve the right to depart from a former decision of the House of Lords when it appeared right to do so, nevertheless began by restating that:

> Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in their conduct of their affairs as well as a basis for orderly development of legal rules.

That this restates the binding effect of a judicial decisions on courts below it is clear from *Cassell & Co Ltd v. Broome & Anor* where Lord Hailsham of St Maryleboyrne LC said at page 563, E5-F6:

> The fact is, and I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers. Where decisions manifestly conflict, the decision in *Young v. Bristol Aeroplane Co Ltd* [1944] KB 718 offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom.

Clearly the principle of *stare decisis* requires more than lip-service.

In *Kathavarayan v. Ng Sup Moi & Anor* [1987] MLJ 246, Her Ladyship Siti Norma Yaakob J (now Chief Judge of Malaya) said at p. 250:

> The principle of *stare decisis* has long been accepted by our Courts and this was reaffirmed again in the case of *Public Prosecutor v. Datuk Tan Cheng Swee & Anor* where the Federal Court held that "the principle requires more than lip service". Being a lower tribunal, I am duty bound to follow the precedent set by the Federal Court ...

In *Periasamy s/o Sinnapen v. Public Prosecutor* [1996] 3 CLJ 187. His Lordship Gopal Sri Ram JCA said at pp. 213-214:

> Lastly the learned appellate judge did not sufficiently address his mind to the decision in *Khoo Hi Chiang*. We find the cavalier fashion on which he approached the judgment of a five-member bench of the Supreme Court in a case which was an authority binding upon him to be quite appalling. We are convinced that the learned judge ought not to have brushed it aside as he did.
>
> We may add that it does not augur well for judicial discipline when a High Court judge treats the decision of the Supreme Court with little or no respect in disobedience to the well-entrenched doctrine of *stare decisis.*

> We trust that the occasion will never arise again when we have to remind High Court judges that they are bound by all judgments of this court and of the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein.

In *Dalip Bhagwan Singh v. Public Prosecutor* [1997] 4 CLJ 645, Peh Swee Chin SCJ said at p 660:

> The doctrine of *stare decisis* or the rule of judicial precedent dictates that a court other than the highest court is obliged generally to follow the decisions of the courts at a higher or the same level in the court structure subject to certain exceptions affecting especially the Court of Appeal.

The Rt. Hon. Lord Denning, Master of the Rolls in his book, *The Discipline of Law* said:

> Let it not be thought ... that I am against the doctrine of precedent. I am not. It is the foundation of our system of case law. This has evolved by broadening down precedent to precedent. By standing by previous decisions, we have kept the common law on a good course. All that I am against is its too rigid application-a rigidity which insists that a bad precedent must necessarily be followed. I would treat it as you would a path through the woods. You must follow it certainly so as to reach your end. But you must not let the path become too overgrown. You must cut out the dead wood and trim off the side branches; else you will find yourself lost in thickets and brambles.
>
> My plea is simply to keep the path to justice clear of obstructions which would impede it.

In *Tai Chai Yu v. The Chief Registrar of the Federal Court* [1998] 2 CLJ 358, His Lordship Gopal Sri Ram JCA at p. 360 said:

> A final decision of the Federal court, once pronounced, is binding upon the parties thereto and its correctness may only be questioned in a subsequent case where the identical point of law arises for decision.

In *Koperasi Rakyat Berhad v. Harta Empat Sdn Bhd* [2000] 3 CLJ 719 His Lordship Gopal Sri Ram JCA for the Federal Court at 724-727 said:

> In an earlier passage in the same judgment, this court made clear the need to observe with rigour the doctrine of *stare decisis*. It is a passage (at p. 835) which merits reproduction:

A

> In *Harta Empat*, the Court of Appeal in effect held that *Feyen* was not binding on it because it had overlooked certain provisions of the Code, to wit ss. 241(3) and 301(c). It was on the basis of this that the Court of Appeal relegated *Feyen* to mere *obiter dicta*. It is elementary that where, for example, a statute or a rule having statutory effect which would have effected the decision was not brought to the attention of the earlier court, the decision would have been given *per incuriam* (see the third exception, per Lord Green MR in *Young v. Bristol Aeroplane Co Ltd* [1944] 1 KB 718). On the other hand, *obiter dictum* is a mere chance remark by the court and is used in contradistinction to *ratio decidendi* the rule of law for which a case is authority. Clearly the Court of Appeal meant to say that our decision in *Feyen* was given *per incuriam*.

> Great care must be taken especially in a case as the present which concerns the interpretation of a statutory provision. It should not be done save in the most exceptional of cases. Otherwise it would lead to uncertainty. Men of business must be in a position to organize their affairs in such a fashion that they keep well within the framework of the law. And members of the legal profession must be able to advise their clients with some degree of certainty as to what the law is upon a particular subject matter. Certainty in the law is therefore one of the pillars upon which our justice system rests.

In *Public Prosecutor v. Mohamed Salleh bin Bitam and Public Prosecutor v. Bachita Singh & 2 Ors* [1940] MLJ 149 Poyser CJ; McElwaine CJ (SS) and Terrell JA (Malaya) at p. 154 said:

> The first point is whether this court is bound by its previous decisions or not. In the Colony, the Court of Appeal appears to have considered that under exceptional circumstances they might hold that they were not bound by their previous decisions. On the other hand, the Court of Appeal in the Federated Malay States has held that they are so bound.

In *Dato' Tan Heng Chew v. Tan Kim Hor & Another Appeal* [2006] 1 CLJ 577, Steve Shim CJ (Sabah and Sarawak) at p. 583 said:

> I may add that I agree entirely with his Lordship's observation that the Court of Appeal is bound by the doctrine of *stare decisis* to follow the 'real danger of bias' test for recusal adopted by the Federal Court in *Majlis Perbandaran Pulau Pinang v. Sykt. Berkerjasama-sama Serbaguna Sungai Glugor* [1999] 3 CLJ 65 and *Mohamed Ezam bin Mohd Nor & 4 Ors v. Ketua Polis Negara* [2001]

> 4 CLJ 701. It is axiomatic to state that the doctrine of *stare decisis* has become the cornerstone of the common law system practiced in law. It has attained the status of immutability …
>
> Judicial hierarchy must be observed in the interests of finality and certainty in the law and for orderly development of legal rules as well as for the courts and lawyers to regulate their affairs. Failure to observe judicial precedents would create chaos and misapprehension in the judicial system.
>
> … Until such time when the Federal Court holds otherwise, this test must be remain entrenched and binding on all inferior courts including the Court of Appeal. Certainty in law must prevail.

His Lordship Abdul Hamid Mohamad FCJ at p. 588 said:

> The judgments in *Majlis Perbandaran Pulau Pinang (supra)*, *Allied Capital Sdn Bhd v. Mohamed Latiff Shah Mohd and Another Application*, and *Mohd Ezam Mohd Nor (supra)* being judgments of the Federal Court, are binding on the Court of Appeal. Whether the Court of Appeal agrees with them or not, it is incumbent upon it to apply the test. However, if the court thinks that it has good reasons for disagreeing with the judgments, it may, while following them, point out why they should be reviewed by the Federal Court. But the review, if it were to be done, should be done by the Federal Court. Until it is actually done by the Federal Court, they remain binding on the Court of Appeal.

Recently in *Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v. Fawziah Holdings Sdn Bhd* [2006] 3 CLJ 177, the Federal Court at pp. 204-205 said that the judge of the Court of Appeal:

> … is not the right authority permitted by law to express such an opinion. As both cases are judgments of the Federal Court, he is bound to follow them whether he agrees with them or not.

The Federal Court further at p. 206 said:

> … the castigation of a judge of the High Court for not respecting the doctrine of *stare decisis* must apply with greater force to a judge of the Court of Appeal. In *Megat Najmuddin bin Dato' Seri (Dr.) Megat Khas v. Bank Bumiputra (M) Bhd.* [2002] 1 MLJ 385 Mohtar bin Abdullah FCJ at p. 426 said, the Federal Court is the apex court.

A On the other hand it will not be complete if this court were to omit to include an important passage in *Ibrahim bin Ismail* as to why the Court of Appeal decided to depart from *Chan Chin Min* against the binding judicial precedents.

B His Lordship Gopal Sri Ram JCA in *Ibrahim bin Ismail & Anor v. Hasnah bte Puteh Imat & Anor and Another Appeal* [2004] 1 CLJ 797 at p. 807 said as follows:

> Having come to the conclusion that *Chan Chin Min* was wrongly decided by the majority in that case, are we entitled to depart
C from it? We think we are. *Chan Chin Min* was decided before the establishment of this court. It was decided at a point of time when the High Court had original jurisdiction over personal injury and fatal accident claims. Appeals were preferred to the Supreme Court which stood at the apex of the judicature. That is not the
D case today. All personal injury and fatal accident claims are now solely within the jurisdiction of the Subordinate Courts. Appeals are to the High Court and finally to this court. We therefore stand at the apex in respect of these claims.

[17] In Ipoh High Court Civil Appeal No. 12-56-02, *Wakil Diri*
E *bagi Hartapusaka Loganathan a/l Subramaniam (si mati) lwn. Subramaniam a/l Guruwan & Anor*, the Sessions Court awarded nine years as the multiplier to the parents of the deceased (aged 21 years and unmarried at the time of his death) in a dependency action. The defendant appealed to the High Court to reduce the
F multiplier from nine years to seven years and relied on the majority decision in *Chan Chin Min & Anor*. However, the plaintiffs filed a cross appeal against the multiplier of nine years and appealed for 16 years as decided by the Court of Appeal in *Ibrahim bin Ismail* and *Cheng Bee Teik*. On hearing both parties and following the
G decision in both *Ibrahim bin Ismail* and *Cheng Bee Teik*, this court allowed the cross appeal by the parents of the deceased and awarded the 16 years' statutory multiplier as provided in s. 7(3)(iv)(d) of the Civil Law Act 1956 (see *Marappan Nallan Koundar & Anor v. Siti Rahmah bte Ibrahim* [1990] 1 CLJ 32;
H [1990] 1 CLJ (Rep) 174). As the appeal by the defendant to reduce the multiplier in *Wakil Diri bagi Hartapusaka Loganathan a/l Subramaniam (si mati) lwn. Subramaniam a/l Guruwan & Anor* was withdrawn, the appeal was struck off by this court.

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[18] Be that as it may, this court must at this stage confess that after reading the minority judgment of His Lordship Abdul Aziz JCA (now FCJ) in *Noraini Omar* on the doctrine of *stare decisis*, which at the time this court delivered the decision on 19 January 2006 in Civil Appeal No. 12-56-02 was not reported, this court had to reconsider whether to depart from its earlier decision in *Wakil Diri bagi Hartapusaka Loganathan a/l Subramaniam (si mati) lwn. Subramaniam a/l Guruwan & Anor*, for the compelling reasons as advanced by His Lordship Abdul Aziz JCA (now FCJ) in the dissenting decision in *Noraini Omar*'s case on the doctrine of *stare decisis.*

[19] On the other hand, this court had also to consider the Supreme Court decision in in *Marappan Nallan Koundar & Anor v. Siti Rahmah bte Ibrahim* [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174, where the claimant who suffered injuries in a road traffic accident was awarded the statutory multiplier of 16 years for loss of future earnings by the High Court, Ipoh even though the parties had agreed at 15 years. Accordingly, in *Wakil Diri bagi Hartapusaka Loganathan a/l Subramaniam and Subramaniam a/l Guruwan* in Civil Appeal 12-56-02, this court after having taken into considerations the decision in *Marappan Nallan Koundar & Anor v. Siti Rahmah bte Ibrahim* which was relied on in *Ibrahim bin Ismail* allowed the statutory multiplier of 16 years to the parents of the deceased. It is important to appreciate that the provision of s. 7(3)(iv)(d) and s. 28A(2)(d)(i) of the Civil Law Act 1956 carries the same wording for the formula in the multiplier in assessing damages for loss of earnings in respect of any period after the death of a person in the case of a person who was of the age of 30 years or below at the time of his death and in assessing damages for loss of future earnings when the claimant was injured.

[20] Section 28A(2)(d)(i) of the Civil Law Act 1956 states as follows:

> (2) In assessing damages under this section:
>
> (d) in assessing damages for loss of future earnings the Court shall take into account that:
>
> (i) in the case of a person who was of the age of thirty years or below at the time when he was injured, the number of years' purchase shall be 16;

Section 7(3)(iv)(d) of the Civil Law Act 1956 states as follows:

> 7. Compensation to the family of a person for loss occasioned by his death
>
> (1) …
>
> (2) …
>
> (3) The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):
>
> Provided that:
>
> (i) …
>
> (iv) in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall:
>
> (a) …
>
> (d) take into account that in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one year and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

[21] His Lordship Abdul Malek bin Hj Ahmad J (now President of the Court of Appeal) in *Siti Rahmah bte Ibrahim v. Marappan & Anor* [1989] 1 CLJ 252; [1989] 2 CLJ (Rep) 481 said:

> Next we come to the question of multiplier. If not for the amendments to the Act in 1984, the multiplier would have been 21 as the plaintiff was 23 at the time of the accident. By virtue of s. 28A(2)(d)(i) of the Act, the multiplier is now 16 and the Court would take this as the multiplier despite the fact that both parties had agreed to 15.

[22] However, as the defendant in *Siti Rahmah binti Ibrahim*'s case was not satisfied with the 16 years multiplier as awarded by the High Court since both parties had agreed for 15 years, he appealed to the Supreme Court. In *Marappan Nallan Koundar & Anor v. Siti Rahmah bte Ibrahim* [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174, His Lordship Gunn Chit Tuan SCJ (later Chief Judge of Malaya) for the Supreme Court said:

> The next ground of appeal was that the learned judge had misdirected himself in that he awarded a multiplier of 16 despite the fact that both counsel for the plaintiff and the defendants had agreed and applied to him to record a multiplier of 15. The legislature has made its intention very clear by using mandatory language in s. 28A(2)(d) of the Act 'in assessing damages for loss of future earnings the court shall take into account *that in the case of a person who was of the age thirty years or below at the time when he was injured, the number of years' purchase shall be 16'*. The learned judge was therefore right in awarding a multiplier of 16 in this case. (emphasis added)

[23] On the other hand, the majority decision in *Chan Chin Min* seemed to have given the discretion to the trial court to calculate the multiplier to the parents who are the dependants of the deceased who was unmarried at the time of his death and the flexibility is to be exercised on case to case basis. However, and unfortunately and with respect, both cases in *Takong Tabari* and *Chan Chin Min* did not have the benefit of considering the unanimous decision of the Supreme Court in *Marappan Nallan Koundar* as it was not cited to their Lordships. Had the case of *Marappan Nallan Koundar* although it was the decision in reference to a claimant who was injured been brought to the attention of their Lordships in both *Takong Tabari* and *Chan Chin Min*, on the formula for the multiplier, perhaps, it may have made a difference when considering the doctrine of *stare decisis* and binding judicial precedent. It is important to reiterate that although the decision of the Supreme Court in *Marappan Nallan Koundar* was in reference to a claimant who was injured whereas *Chan Chin Min* was in reference to a claim by the dependants of the deceased, the fact remains that the express provision of s. 7(3)(iv)(d) and s. 28A (2) (d) (i) of the Civil Law Act 1956 on the formula for the multiplier is in *pari materia*.

[24] In *Ravintharan a/l Perumal v. Kuppusamy a/l Aiyasamy* [2005] 2 CLJ 213, this court had on the binding judicial precedent (doctrine of *stare decisis*) at pp. 232-234 said as follows:

> As a matter of judicial comity, this court would usually follow the decision of its brethren of equal jurisdiction unless this court is convinced that the judgment cannot stand in law or cannot on its own be sustained with a decision of the Court of Appeal or the Federal Court. Nevertheless, and although the decision of His Lordship Lamin J (as he then was) in *Sulaiman*'s case and *Malayan Banking Bhd v. Syed Ali bin Mohsin* [1991] 3 CLJ 2892; [1991] 3 CLJ (Rep) 236) have stood unchallenged for about 14 years, with respect, this court has to still decline to follow that decision and *Mohd Safuan b. Wasidin & Anor v. Mohd Ridhuan b Ahmad (an infant)* [1994] 2 MLJ 187 and all other decisions of the High Courts which had followed *Sulaiman*'s case on the interpretation of s. 28(1) of the Courts of Judicature Act 1964 to be read with Order 49 of the Subordinate Court Rules 1980 and Order 55 of the Rules of the High Court 1980 under the doctrine of judicial precedent and which are irreconcilable with the decision of the Court of Appeal. (see *Young v. British Aeroplane Co Ltd* [1944] 2 All ER 293, *Re House Property And Investment Co Ltd* [1953] WLR 1034 at p 1038; *PN Mohamed Ibrahim v. Yap Chin Hock & Anor* [1954] MLJ 127 and *Sundralingam v. Ramanathan Chettiar* [1967] 2 MLJ 211). The decision of the Court of Appeal prevails over all other decisions of the High Court due to the doctrine of judicial precedent. (See *Huddersfield Police Authority v. Watson* [1947] All ER 193 at p. 196)
>
> It is important for this court to remind itself that decisions of the Court of Appeal and the Federal Court on questions of law and principles of law are strictly binding on this court as to propositions which are expressly affirmed unless the proposition of law does not form part of the *ratio decidendi* or is an opinion or an illustration. (See *Osborne v. Rowlett* [1880] LR 13 Ch D 774 and *Close v. Steel Co of Wales Ltd* [1962] 2 All ER 953). Judicial hierarchy must be observed in the interest of finality and certainty of the law and for orderly development of legal rules and for the courts and lawyers to regulate their affairs otherwise there is bound to be a state of uncertainty which the principle of precedent is designed to prevent. (see *London Tramways v. London Country Council* [1895] AC 375; *Tunde Apatira & Ors v. PP* [2001] 1 CLJ 381). If this court is not able or decline to follow the final decision of the two superior courts, the Court of Appeal and the Federal Court, it can only attempt to do so if the facts in those cases are distinguishable and if those facts were the basis of the

decision in the cases. This court is of the view that any contrary view by this court would give rise to an unacceptable degree of "judicial schizophrenia" and could tantamount to misconduct or insubordination. Even if there are series of decisions of the High Court which have faithfully followed each other in the interpretation of a statutory provision, this court is still bound by the decision of the Court of Appeal in conformity with the doctrine of judicial precedent or *stare decisis*. (See *All Persons In Occupation of The House and The Wooden Stores Erected on A Portion of Land Held Under Grant No 26977 For Lot 4271 In The Township of Johor Bahru, Johor v. Punca Klasik Sdn Bhd* [1998] 5 CLJ 49). Accordingly, this court ought to follow the principle enunciated in *Neoh*'s case where the question is one which turns on the construction of a statute or the rules of court any contrary view or stand taken by this court will lead to chaos and judicial indiscipline if *stare decisis* is not maintained. Indeed, there will be judicial revolution for its marks a revulsion of the sacrosanctity that the courts in this jurisdiction have long observed, the doctrine of binding precedent. In *Periasamy s/o Sinnapan & Anor v. PP* [1996] 3 CLJ 187, His Lordship Gopal Sri Ram JCA said:

> We may add that it does not augur well for judicial discipline when a High Court judge treats the decision of the Supreme Court with little or no respect in disobedience to the well –entrenched doctrine of *stare decisis*. We trust that the occasion will never arise again when we have to remind High Court judges that they are bound by all judgments of this court and the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein. (See *Mirehouse v. Rennell* 6 All ER 1015; *Cooper v. Southern Portland Cement Ltd* [1972] 46 ALJR 302; *Cassell & Co Ltd v. Broome & Anor* [1972] AC 1027; *Milangos v. George Frank (Textiles) Ltd* [1975] 2 WLR 555 at p 564; *PP v. Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 276 at p 277; *Kathavarayan v. Ng Sup Moi & Anor* [1987] 1 MLJ 246 at p. 250; *Co-operative Central Bank Ltd (in receivership) v. Feyen Development Sdn Bhd* [1997] 3 CLJ 365, *Dalip Bhagwan Singh v. PP* [1997] 4 CLJ 645 and *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi a/l K Perumal* [2001] 2 CLJ 525.)

[25] In *Co-Operative Central Bank Ltd (in receivership) v. Feyen Development Sdn Bhd* [1997] 3 CLJ 365 Edgar Joseph Jr FCJ at pp. 372-374 said:

A The question therefore arises: is it open to an intermediate court of appeal, such as the Court of Appeal in this country, to disregard a judgment of a final court of appeal such as the Federal Court on the ground that it was given *per incuriam*?

B Our task in answering this question has been made considerably easier by the assistance derived from the remarks of Lord Hailsham in *Cassell & Co Ltd v. Broome & Anor* [1972] AC 1027, which indicated the reaction of the House of Lords to the Court of Appeal's refusal to follow a previous decision of the House on the ground that it had been given *per incuriam*.

C Touching on the repercussions of the Court of Appeal advising judges of first instance to ignore decisions of the House of Lords, Lord Hailsham said this (at p 1054B-D):

> D I am driven to the conclusion that when the Court of Appeal described the decision in *Rookes v. Barnard* as decided *'per incuriam'* or 'unworkable', they really only meant that they did not agree with it. But, in my view, even if this were not so, it is not open to the Court of Appeal to give gratuitous advise to judges of first instance to ignore decisions of the House of Lords in this way and, E if it were open to the Court of Appeal to do so, it would be highly undesirable. The course taken would have put judges of first instance in an embarrassing position, as driving them to take sides in an unedifying dispute between the Court of Appeal or three members of it (for there is F no guarantee the other Lord Justices would have followed them and no particular reason why they should) and the House of Lords. But, much worse than this, litigants would have not known where they stood. None could have reached finality short of the House of Lords and in the meantime, the task of their professional advisers of advising G them either as to their rights, or as to the probable cost of obtaining or defending them, would have been, quite literally, impossible. Whatever the merits, chaos would have reigned until the dispute was settled, and in legal matters, some degree of certainty is at least as valuable part of H justice as perfection.

And in a famous passage (at p 1054D-E), Lord Hailsham concluded this part of the case by saying:

> I The fact is, and I hope that it will never be necessary to say so again, that in the hierarchical system of Courts that exists in this country, it is necessary for each lower tier, including the court of Appeal, to accept loyally the decisions

> of the higher tiers. Where decisions manifestly conflict, the decision in *Young v. The Bristol Aeroplane Co.* offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom.
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> In our view, every word of what Lord Hailsham said regarding the status of judgments and relevance of precedent in the House of Lords, the circumstances, the duty of the Court of Appeal to accept loyally the decisions of the House of Lords and the chaotic consequences which would follow should the Court of Appeal fail in this duty apply with full force, *mutatis mutandis*, to this country and we adopt what His Lordship said. Clearly, the Court of Appeal in *Harta Empat* flew in the face of the principles enunciated by Lord Hailsham and we can only express the hope that it will not be necessary for the Federal Court hereafter to have to remind the Court of Appeal of those principles.

In *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525, the Federal Court at p. 562 said:

> ... it was necessary for each lower tier to accept loyally the decision of the higher tiers and chaotic consequences would follow should the lower tier fail in this duty. It was therefore not open to an intermediate Court of Appeal, such as the Court of Appeal in this country, to disregard a judgment of a final Court of Appeal such as the Federal Court on the ground that it was given *per incuriam*.

[26] Based on the doctrine of *stare decisis*, this court cannot disregard the majority decision of the Supreme Court in *Chan Chin Min* but have to dutifully observe and follow the *ratio decidendi* and at the same time respect the decisions of the Court of Appeal in *Ibrahim bin Ismail, Cheng Bee Teik* and *Noraini Omar*.

[27] Be that as it may, the issue in the instant appeal, is whether this court is bound to follow the decisions of the Court of Appeal in *Ibrahim bin Ismail, Cheng Bee Teik* and *Noraini Omar* as submitted by learned counsel for the plaintiff or the majority decision of the Supreme Court in *Chan Chin Min* as submitted by learned counsel for the defendant. As far as this court is concerned, both the decisions of the Supreme Court and the Court of Appeal are binding upon this court. Nevertheless, the Federal Court has by the cases referred to as above reminded that

A the Court of Appeal, with respect, should follow the decision of the Federal Court and not to depart in accordance with the binding judicial precedent. Accordingly, the same message must necessarily and surely be sufficient for this court to adhere to and strictly and dutifully observe the repeated reminders by the B Federal Court without showing any disrespect to the decisions of the Court of Appeal in this respect. Under the pressing, peculiar and extraordinary circumstances and the strain which is imposed upon this court, it may by implication be seen as going towards that direction by following the decision of the Supreme Court in C *Marappan Nallan Koundar* which seemed to be unavoidable not because of any choices, as both the decisions are binding upon this court but solely and strictly to keep up with the doctrine of *stare decisis* or binding judicial precedent as discussed in the dissenting decision in *Noraini Omar*'s case.

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[28] This court is not in a position to say expressly, whether the unanimous decision of the Supreme Court in *Marappan*'s case or the majority decision in *Chan Chin Min* OR the unanimous decision in *Takong Tabari*, the two unanimous decisions in *Ibrahim bin Ismail* E and *Cheng Bee Teik* and the majority decision in *Noraini Omar* by the Court of Appeal is to be preferred when considering the majority decision in *Chan Chin Min* which seemed to be in conflict with the unanimous decision in *Marappan*'s case on statutory interpretation and on the formula for the multiplier as both the F decisions of the Supreme Court and the Court of Appeal are binding upon this court.

[29] It is also important to refer to the case in *Tan Kim Chuan & Anor v. Chandu Nair* [1991] 1 CLJ 682; [1991] 1 CLJ (Rep) 441 where Abdul Hamid Omar LP said:

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> We feel that our legislature has enacted exhaustively and exclusively. The continued validity of the common law concept governing the future earnings of injured people in contrast to amended provisions in accident cases such as the present are H inconsistent with each other and cannot co-exist.

[30] Nevertheless, having given due considerations to the express provision in s. 7(3)(iv)(d) and coupled with the interpretation given to s. 28A(2)(d)(i) of the Civil Law Act 1956 by the unanimous decision of the Supreme Court in *Marappan Nallan Koundar* which I is in *pari materia* with s. 7(3)(iv)(d) on the formula for the

multiplier and which was not considered in *Chan Chin Min*, and considering the three decisions of the Court of Appeal namely, *Ibrahim bin Ismail*, *Cheng Bee Teik* and *Noraini Omar*, this court is inclined to follow the statutory interpretation given by the Supreme Court in *Marappan Nallan Koundar* and consequently the unanimous decisions of Court of Appeal in *Ibrahim bin Ismail* and *Cheng Bee Teik* and the majority decision in *Noraini Omar* which shall prevail. Accordingly, this court has no alternative but to dutifully follow the unanimous decision of the Supreme Court in *Marappan Nallan Koundar* which is also the minority decision in *Chan Chin Min* and followed by the Court of Appeal in *Ibrahim bin Ismail*, *Cheng Bee Teik* and *Noraini Omar*.

[31] It is the respectful view of this court that the judicial dilemma faced by this court and the lower courts cannot go on indefinitely and must be put to rest once and for all. The most disturbing part of this uncertainty is that despite the interpretation given by the Supreme Court in *Marappan Nallan Koundar*, the decisions of the Court of Appeal in *Ibrahim bin Ismail*, *Cheng Bee Teik* and *Noraini Omar*, on the formula for the multiplier, the legal argument on the multiplier to be awarded to the parents of unmarried deceased in dependency action still continues to be a live issue and has been repeatedly found to be the subject of discontentment and under academic scrutiny and judicial disagreement and debated, as a result, the legal practitioners themselves are in a state of uncertainty in addition to the dilemma and strain faced by judicial officers.

[32] In addition to this sad state of affairs, there is also a High Court decision in *Eng Jian Wei & Anor v. Lee Cheong Sim & Ors* which has followed the majority decision of the Supreme Court in *Chan Chin Min* in compliance with the doctrine of binding judicial precedent. The predicament of His Lordship in *Eng Jian Wei* who followed the majority decision of the Supreme Court in *Chan Chin Min* is not beyond comprehension as His Lordship had to make a choice between the majority decision of the Supreme Court in *Chan Chin Min* and the unanimous decision of the Court of Appeal in *Ibrahim bin Ismail* as at that time the unanimous decision in *Cheng Bee Teik* and the majority decision and the dissenting decision in *Noraini Omar* was not reported as yet.

[33] For the sake of completion it is only appropriate to observe that prior to the amendment of s. 7 of the Civil Law Act 1956 which has now set the formula for the multiplier, there was the balancing exercise by the courts, ie, deduction or discount was made for two factors, first, for inevitable contingencies and uncertainties of human life and working capacity, secondly, one lump sum and accelerated payment when compared to the earnings which would have been spread over the whole future working life of the deceased had he been alive. In cases of dependency action by the parents of unmarried deceased, the diminishing or reduction effect in the contribution to the parents after the deceased is married if he had been alive and this prospect of marriage was always a relevant factor when assessing damages to be awarded for loss of contribution (see *Pang Ah Chee v. Chong Kwee Sang* [1985] 2 CLJ 221; [1985] CLJ 236, *Dolbey v. Goodwin* [1955] 1 WLR 55, *Lien Hock Seng & Anor v. Sakkarai a/l Mookiah* [1997] 2 CLJ Supp 341).

[34] However, it is to be observed that amongst the objects for the substantive amendment to the Civil Law Act 1956 which came into effect on 1 October 1984 was first, to make certain the awards in view of the variance of court awards in running down cases for personal injuries and dependency actions and secondly, with the view to protect the financial position of the Insurance Industry in this jurisdiction. It is regrettable however that one thing seemed to have not been considered or made clear by the amendment and which is not an issue or argued in the instant appeal, it is, the advanced age of the dependants/parents, like 75 years and above. Did the legislature intend that the 16 years statutory multiplier should still be applied in those circumstances? The statutory multiplier does not seemed to have taken into considerations or made allowance for this factor on parents' advanced age as the contribution may not continue for 16 years had the deceased been alive as this will depend on the health status of the aged parents who may be considered under the category of advance age, eg, 75 years and above 'since good health' is also a relevant consideration in a claim for loss of future earnings by a claimant who was injured. The amendment in fact, with respect, has become a live issue and resulting in constant debates and has caused more uncertainties especially when the legislature had decided to take away the discretion given to the courts which no doubt would be exercised judicially.

[35] This court is of the considered view that the damages to be awarded for dependency actions to parents of an unmarried deceased should have been left open to the discretion of the courts. The reason being, the amendment on the formula for the multiplier seemed not have taken into consideration two factors, the prospect of marriage had the deceased continued to live and the chances of the contribution being reduced or diminished and the advanced age of the parents who may not live to receive the contribution for 16 years.

In *Appalasamy a/l Bodoyah v. Lee Mon Seng* [1996] 3 CLJ 71, His Lordship Abdul Malik Ishak J at p. 78 said:

> I am acutely aware that in running down cases, the plaintiff would surely make an attempt to reap harvest out of his misfortune. Put differently, an aggrieved plaintiff would usually make a fortune out of his own misfortune. But that is not the right approach to adopt ... Thus, one must not forget the general rule that the function of damages in tort actions is purely to put the plaintiff in the position which he would have been in had the tort not been committed in the first place and this can only be done through a reasonable award of damages.

[36] In the circumstances, is it fair to fix the multiplier to 16 years and insist the formula for the multiplier to be mandatory? The best solution would have been as stated above, to leave the subjective consideration on the multiplier in dependency actions by parents of a deceased who is unmarried at the time of his death to the discretion of the courts who no doubt will decide on the evidence and on a case to cases basis.

[37] Finally, in order to ensure a consistent decision in the court system, it is appropriate to state what Chief Justice Arthur T. Vanderbilt of the New Jersey Supreme Court said:

> It is in the courts and not in the legislature that our citizens primarily feel the keen, cutting edge of the law. If they have respect for the work of the courts as it affects them, their respect for law will survive the shortcomings of every other branch of government; but if they lose their respect for the work of the courts, their respect for law and order will vanish with it.

> Judges learned in the law, not merely the law in books, but something far more difficult to acquire, the law as applied in action in the courtroom; judges deeply versed in the mysteries of human nature and adept in the discovery of the truth in the discordant testimony of fallible human beings; judges beholden to no man, independent and honest and – equally important – believed by all men to be independent and honest; judges, above all, fired with consuming zeal to mete out justice according to law to every man, woman and child that may come before them and preserve individual freedom against any aggression of government; judges with the humility born of wisdom, patient and untiring in the search of truth, and keenly conscious of the evils arising in a workaday world from any unnecessary delay – judges with all these traits dare we eliminate if we are to hope to attain even-handed justice?

In the final analysis, it is hoped that in the interest of all concerned that the formula for the multiplier in running down cases in dependency action by the parents of an unmarried deceased be resolved without leaving it supposedly in state of uncertainty, anxiety and for arguments so that there can be uniform practice to be followed. As insurance companies are ultimately the paymasters, a conclusive decision no doubt will assist the legal practitioners to advise their clients, be it for the claimants or the insurance companies by which finality would possibly be able to be reach as an out of court settlement or an agreement on the number of years purchase and proceed to assess the other claim of damages, bearing in mind the majority decision in *Chan Chin Min* is binding upon this court and since there is dissenting decision in *Noraini Omar*'s case.

[38] As to liability, the finding of 100% negligence against the defendant by the learned Sessions Court Judge is set aside and as agreed by both parties is substituted being 60% negligence against the defendant and 40% contributory negligence against the deceased-rider.

[39] In the circumstances and for the reasons stated above, this court is compelled to allow the plaintiff's appeal against the award of seven years by the learned Sessions Court Judge. The multiplier of seven years is set aside and substituted with 16 years, (RM600 x 12 x 16 = RM115,200). Each party to bear their own costs. Deposit of the appeal is refunded to the plaintiff's solicitor.